THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3800 OF 1999

DATED 20th FEBRUARY, 2006

BETWEEN

Y.Guna Ranjan and another

… Petitioners

and

The District Collector, West Godavari District

And others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.3800 OF 1999

ORDER:

The two petitioners claim to be owners of land admeasuring Acs.25.48 in Amberpet village of Bhimadole Mandal in West Godavari District. The land is comprised in survey
Nos.360/1, 360/2, 361/2, 361/3, 362/1, 362/2, 363/1, 363/2, 363/3, 363/4, 364/1 and 364/2. The petitioners claim that they succeeded to the property under a Will, dated 26.01.1989 executed by their father. When there was a threat of dispossession, they filed writ petition being W.P.No.15684 of 1989. This Court disposed of the same on 17.01.1990 directing the respondents not to interfere with the possession of the petitioners except in accordance with due process of law. The petitioners allege that the second respondent identified an extent of Acs.4.50 in Survey No.364/2 without initiating any proceedings under the Land Acquisition Act, 1894. The petitioner, therefore, submitted representation on 12.09.1995, in vain. The petitioners also allege that local M.L.A., of Gopalapuram Constituency influenced the respondents to acquire the land for distribution of house site pattas.

In the counter affidavit filed on behalf of the respondents, it is claimed that the land in Survey No.364/1 & 2 admeasuring Acs.3.34 is classified in Government records as Assessed Waste Dry land in August, 1987. The same was distributed to forty one (41) beneficiaries as house site pattas. However, the land was not handed over and subsequently an extent of Acs.10.00 including the land covered by the house site pattas was proposed to be allotted to Milk Chilling Center at Bhimadole on condition that the milk chilly center should be taken up within two years. As the same was not done even after lapse of eight years, the Government issued orders in G.O.Rt.No.406, dated 20.03.1998 cancelling the earlier allotment orders and accorded permission to the District Collector to take action for issue of house site pattas to eligible beneficiaries from among those to whom pattas were originally granted on 15.08.1987. Accordingly, pattas were issued to forty one (41) beneficiaries. It is also stated that the petitioners filed O.S.No.293 of 1997 on the file of the Court of Additional Junior Civil Judge, Eluru, for permanent injunction against the Government. The said case is still pending and this present writ petition is filed suppressing the facts.

The fact that the petitioners filed O.S.No.293 of 1997 before the civil Court is not denied. Further along with the counter affidavit, the respondents have annexed a Xerox copy of the order of the Division Bench in W.P.No.16854 of 1989, dated 26.02.1997. The said writ petition was filed seeking a writ of Mandamus declaring the action of the respondents in dispossessing the petitioners as illegal and arbitrary. This Court observed that the relief prayed can be obtained in the civil Court and that the writ petition is not maintainable. The petitioners have already filed a suit and if so advised, they can file another suit for declaration of title. In the absence of any reply affidavit denying the counter averments and also in the absence of any evidence, which is not produced before this Court, the case of the petitioners under Article 226 of Constitution of India cannot be accepted. It shall be open to the petitioners to avail appropriate common law remedies.

The writ petition, with the above observations, is accordingly dismissed. No costs.

_____

(V.V.S.RAO,J)

20.02.2006.

pln